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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Franz Josef Gassmann      Examiner: Christopher A. Mahoney  
Serial No: 10/080,806      Group: Art Unit 2851  
Filed: February 21, 2002      Date: February 22, 2006  
For: CAMERA, PROCESS FOR      Attorney Docket: 298-154  
RECONSTRUCTING AN IMAGE  
INFORMATION, AND PROCESS  
FOR CALIBRATING AN  
IMAGE INFORMATION

Mail Stop: AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

PETITION TO CORRECT AND WITHDRAW FINALITY OF OFFICE ACTION

Pursuant to 37 C.F.R. §1.181(a)(1) and M.P.E.P. §§1002.02(c) and 706.07(c), it is respectfully requested finality of the Office Action mailed October 19, 2005 by the Patent and Trademark Office in the above-identified application, be withdrawn as premature, for the following reasons.

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CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postpaid in an envelope, addressed to the: Mail Stop AF, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: February 22, 2006

  
Leo G. Lenna

An Amendment After Final Action was filed with the Request for Continued Examination (RCE) on June 13, 2005. This Amendment amended claims 1-4, 6, 8, 9, 11 and 18 and introduced new dependent claims 27-33 for the first time. These new claims were added without canceling a corresponding number of finally-rejected claims, as required by 37 C.F.R. §1.116.

A first final Office Action was mailed October 19, 2005 after filing of the RCE in this Office Action, objections to language in previously -presented claims 1-4 were raised, for the first time, on page 2. Previously-presented claims 2-32 were also rejected, for the first time, under 35 U.S.C. §112, first paragraph, on page 3 of the Office Action. There is no statement in the Office Action that newly-added claims 27-33 have been even treated over the art.

A telephone call was made to the Examiner requesting that finality of this particular Office Action be withdrawn. It was pointed out that new claims 27-33 were introduced, for the first time and no action on their merits before this final action had been taken in this case. The Examiner recommended this Petition be prepared and filed to set forth applicants' position in detail.

Accordingly, the present Petition is being filed to correct and withdraw finality of the Office Action as premature.

In accordance with M.P.E.P. §706.07(h)VIII., the first Office Action immediately subsequent to filing an RCE may be made final only if the conditions set forth in M.P.E.P. §706.07(b) for making a first action final in a continuation application are met. According to M.P.E.P. §706.07(b), all claims presented for examination must be drawn to the same invention claimed in the earlier application, to make the first Office Action

final. Here, the added claims are dependent from claims and limitations to the independent claims from which they depend.

Accordingly, the claims presented in the Amendment After Final Action filed with the RCE are not all directed to the same invention as previously-presented.

Furthermore, as pointed out *supra*, the total number of claims has been increased by this amendment, without canceling a corresponding number of finally-rejected claims. Furthermore, new rejections against previously-presented claims have been raised for the first time in the Office action, while it does not appear newly-added claims 27-33 have been trusted over the prior art. It is respectfully pointed out Applicants are not challenging the right of the Examiner to reject the pending claims for any reason or over any combination of prior art. Rather, Applicants are simply pointing out the first Office Action after filing the RCE in the present instance should be nonfinal, to allow Applicants full opportunity to address the rejections raised against the presented claims.

Accordingly, for these reasons, it is respectfully requested finality of the Office Action mailed October 19, 2005 by the Patent and Trademark Office in the above-identified application be withdrawn as premature, and a corrected nonfinal Office Action treating all pending claims 1-33 fully on the merits be issued, with the response period reset. A check in the amount of \$130 for the petition fee in accordance with 37 C.F.R. §1.17(h) is enclosed; the right is explicitly reserved to request a refund of this petition fee should the enclosed petition be granted and/or finality of the Office Action be withdrawn.

Please charge any deficiency as well as any other fee(s) which may become due

under 37 C.F.R. §§1.16 and/or 1.17 at any time during the pendency of this application,  
or credit any overpayment of such fee(s) to Deposit Account No. 04-1121. A

DUPLICATE OF THIS SHEET IS ENCLOSED.

Early favorable action is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Leo G. Lenna", is written over a horizontal line.

Leo G. Lenna  
Reg. No. 42,796  
Attorney for Applicant(s)

DILWORTH & BARRESE, LLP  
333 Earle Ovington Boulevard  
Uniondale, New York 11553  
(516) 228-8484